

CHRISTOPHER DUNE ROBERTS,)
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 Plaintiff,)
)
 v.) No. 4:11CV2007 JAR
)
 STEVE R. DAVIS, et al.,)
)
 Defendant.)

This matter is before the Court on plaintiff's *ex parte* motion for a temporary restraining order, motion for leave to file an amended complaint, and motion requesting service on the complaint.

To determine whether preliminary injunctive relief is warranted, the Court must balance the threat of irreparable harm to movant, the potential harm to the nonmoving

party should an injunction issue, the likelihood of success on the merits, and the public interest. Dataphase Sys. v. CL Sys., 640 F.2d 109, 113-14 (8th Cir. 1981) (en banc). Furthermore, in order to be granted an *ex parte* temporary restraining order, a plaintiff must submit an affidavit or verified complaint showing “that immediate and irreparable injury, loss, or damage will result to the plaintiff before the adverse party or that party’s attorney can be heard in opposition.” Fed. R. Civ. P. 65(b).

The request for a temporary restraining order must be denied because plaintiff has not submitted an affidavit or verified complaint showing that immediate irreparable injury will occur before defendants can be heard. Moreover, the public interest weighs against a federal court’s interference with the workings of a state prison absent extraordinary circumstances. And the circumstances in this action are not extraordinary. As a result, the motion for a temporary restraining order will be denied without prejudice.

Plaintiff’s motion for leave to file an amended complaint is moot. Plaintiff has the right to file an amended complaint before any defendant files a responsive pleading. Fed. R. Civ. P. 15.

Plaintiff’s motion requesting service on the complaint is also moot.

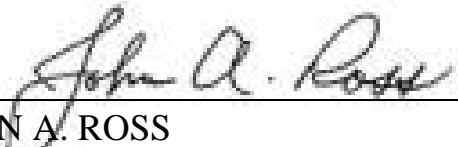
Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for a temporary restraining order [Doc. 8] is **DENIED** without prejudice.

IT IS FURTHER ORDERED that plaintiff's motion for leave to file an amended complaint [Doc. 6] is **MOOT**.

IT IS FURTHER ORDERED that plaintiff's motion requesting service on the complaint [Doc. 3] is **MOOT**.

Dated this 14th day of December, 2011.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE